



THE LAW SOCIETY OF SCOTLAND INTRA UK TRANSFER TEST

PAPER III EUROPEAN UNION LAW AND INSTITUTIONS

7 November 2017
1000-1200

Please read the following instructions carefully

The examination is of two hours' duration. Candidates are required to answer **FOUR** questions; **ONE** question must be answered from **Section A** and **ONE** question from **Section B**. The **third** and **fourth** questions can be answered from anywhere in the paper. All four questions are of equal value. Answers must be fully reasoned and supported by authority where appropriate. Candidates need to take care to **read the questions carefully and to answer what is asked.**

[Candidates are permitted to have at hand during the examination one of: *Blackstone's EU Treaties & Legislation* (Foster (ed)); *Cambridge Statutes, EU Treaties and Legislation* (Schütze (ed)); *Core EU Legislation* (Smith (ed)); *European Union Legislation* (Kenner (ed)); a copy of the EU Treaties published by the Office of Official Publications of the European Union. These materials can be underlined and highlighted, but not annotated.]

PART A

Candidates MUST answer at least ONE question from this part

Question 1

The Prime Minister has said that 'no deal is better than a bad deal' in present Brexit negotiations. Discuss

- the current status of those negotiations;
- your view as to their (a) optimal and (b) likely outcome; and
- the legal situation in which the UK will find itself on 29 March 2019 should, as some in the cabinet are urging, the UK withdraw from negotiations and no deal is reached.

Question 2

The three principal heads of jurisdiction conferred by the TFEU upon the Court of Justice are

- Article 258
- Article 263
- Article 267

Analyse carefully the purpose and operation of each, any shortcomings you can identify, and the legal consequences of a judgment rendered under each.

Question 3

Explain how the European Court of Justice developed and justified the principle of the primacy of European Community/Union law. Have the courts in the United Kingdom fully accepted the ECJ view? How does the European Union (Withdrawal) Bill propose that the UK disengage from its operation?

Question 4

In Case C-413/15 *Farrell v Whitty and the Motor Insurers' Bureau of Ireland*, EU:C:2017:492, the Advocate-General said:

'The concept that EU law is not just about inter-State relations, but confers rights on individuals, goes back to van Gend & Loos. The reasoning behind vertical direct effect of directives follows the same logic. A clear, precise and unconditional provision in a directive encapsulates a right that the Member States, in promulgating that directive, agreed should be conferred on individuals.'

[please turn over]

Although 'the choice of form and methods' are left to the Member State when transposing a directive into national law, a directive 'shall be binding, as to the result to be achieved, upon each Member State to which it is addressed' (Article 288 TFEU). In principle, a Member State should naturally comply with its obligations and transpose each directive fully and correctly by the due date for transposition. The directive then becomes, in a sense, invisible, because the rights that it confers are now to be found fully expressed in national law.

Sometimes, however, that does not happen...!

How has the Court of Justice sought to address the problem of when it does not happen?

END OF PART A

PART B

Candidates MUST answer at least ONE question from this part

Question 5

Discuss the compatibility with EU law of the following events:

- a) Epoisse de Bourgogne is a French cheese from Burgundy. Owing to recent exposure on a BBC cookery show it has become quite popular in the UK. However it is exceptionally smelly, so much so that Lothian Regional Transport, owned and operated by the City of Edinburgh Council, has taken the exception step of banning its carriage on all their buses.
- b) Ketchup is a sickly sweet table sauce made primarily from tomatoes. HJ Heinz of Pennsylvania produces a popular brand of it and markets it throughout Europe as Heinz Tomato Ketchup. However in Germany it cannot be sold as 'ketchup' (*Tomaten-Ketchup*) but only as 'tomato seasoning' (*Tomate-Würze*) as it contains insufficient tomato purée to satisfy the legal definition of ketchup there.
- c) The City of Edinburgh Council has decided to use its powers under the Local Government in Scotland Act to require carry out fast food shops (kebab houses, burger places, chip shops) within half a mile of a primary school to close between 11:30 and 1:30 and 3:00 and 5:00. The purpose is to tackle childhood obesity.

Question 6

- a) Concerned about their status here, a large number of third country nationals married to EU citizens resident in the UK have applied for a 'long-term resident's EC residence permit', only to be refused by the Home Office and told to 'make preparations to leave the country'.

If such an individual approached you for advice as to whether he or she must comply, what would you advise? If you charged for your advice, could he or she recover your fee from the Home Office?

- b) In Scotland the annual fee for full-time university study is met in full directly by the Student Awards Agency for Scotland (SAAS) for students ordinarily resident, for three years prior to the start of his or her study, in Scotland or anywhere in the EU; the exception is students from England, Wales or Northern Ireland, who are required to pay fees of up to £9000.

Why are students from the EU exempt from paying fees, and why does this not apply to a student from England, Wales or Northern Ireland? If a student from England asked your advice as to any device whereby the rule

could be circumvented so that he or she would pay no fees, is there anything you can suggest?

- c) *Rammstein* is a German rock band (in the *neue deutsche Härte* style) based in Berlin. The band has just signed a contract for a 2 month concert tour of the UK. However, whilst most band members are German, their bassist, Ollie, is a Serb who has lived in Germany for many years. Ollie has been notified by the Home Office that he will require a work permit (a 'Tier 5 visa') in order to take part in the tour.

Advise Ollie as to whether he can challenge the Home Office on the basis of EU law.

Question 7

In Case C-226/11 *Expedia v Autorité de la concurrence*, EU:C:2012:795, the Court of Justice said:

'The Court has emphasised that the distinction between 'infringements by object' and 'infringements by effect' arises from the fact that certain forms of collusion between undertakings can be regarded, by their very nature, as being injurious to the proper functioning of normal competition.

It must therefore be held that an agreement that may affect trade between Member States and that has an anti-competitive object constitutes, by its nature and independently of any concrete effect that it may have, an appreciable restriction on competition.'

How has this judgment altered significantly our understanding of the meaning and application of Article 101 TFEU?

Question 8

'The Court of Justice frequently asserts that there is nothing in EU competition rules which prevents an undertaking with significant market power from competing vigorously in the marketplace. However a close analysis of case law under Article 102 TFEU shows that this is not always so.'

Discuss.

END OF PART B

END OF PAPER